

**Memorandum of Decision: 01-20170746
Individual Income Tax
For Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Individual failed to provide sufficient documentation to show that she was timely in her response to Department's proposed assessment and demand notice. However, upon investigation, the Department determined that it improperly denied \$135, therefore Taxpayer will be refunded that amount.

ISSUE

I. Individual Income Tax - Collection Fees.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

Taxpayer protests the partial denial of her claim for refund.

STATEMENT OF FACTS

Taxpayer is an individual that failed to file her 2011 Indiana Individual Income Tax Return. The Indiana Department of Revenue ("Department") issued a "best information available" assessment (the "BIA Assessment") for the estimated income tax due. Taxpayer did not protest the BIA Assessment. As a result of Taxpayer's lack of a protest and failure to file an actual return, the BIA Assessment advanced to a demand notice and eventually to a tax warrant.

The Department, through a third party collection agency, garnished Taxpayer's wages in order to collect on the tax owed. Taxpayer requested a refund. The Department denied the request in full because, "[A]n overpayment does not exist on your account at this time for the periods or tax types you reference on your refund claim." Taxpayer protests the denial of her claim for refund. An administrative hearing was held, and this Memorandum of Decision ensues. Additional facts will be provided as necessary.

I. Individual Income Tax - Collection Fees.

DISCUSSION

Taxpayer protests the Department's refund denial. Taxpayer maintains that the Department received the proper amount of tax due, and upon Taxpayer complying with the Department's filing requirements, the Department received more than what was due. Taxpayer claims she is entitled to the full refund of the amounts levied by the collection agency. The issue is whether the refund denial was proper.

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k).

IC § 6-8.1-8-2 provides that the Department must issue a demand notice for payment which grants the taxpayer a ten (10) day period of time in which to "either pay the amount demanded or show reasonable cause for not paying the amount demanded." IC § 6-8.1-8-2(a). If a taxpayer "does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs," and other fees. IC § 6-8.1-8-2(b). When it has issued a tax warrant, the Department may contract with a collection agency to collect delinquent tax plus interest, penalties, collection fees, and other fees and costs. IC § 6-8.1-8-4(a). Additionally, "a collection fee of ten percent (10 percent) of the unpaid tax is added to the total amount due." *Id.* When a tax warrant is filed, "the total amount of the tax warrant becomes a judgment against the person owing the tax." IC § 6-8.1-8-2(e).

In this case, the liability advanced through the legally required procedures. Taxpayer failed to properly file her 2011 Indiana income tax return. The Department issued a proposed assessment on September 21, 2015. The Department then subsequently issued a corresponding demand notice on November 23, 2015. The assessment staged to a sheriff warrant December 9, 2015. The assessment then staged to a collection agency warrant December 11, 2015. Taxpayer submitted her return May 11, 2016, which was processed by the Department May 26, 2016. Taxpayer then filed for her refund claim on September 1, 2016.

The Department incurred fees based on a valid Department assessment that advanced to a tax warrant. The fees collected are proper if the fees were paid based on the information available to the Department at the time the fees are collected rather than at some time after collection. Additionally, the collection fees were not retained by the Department, and therefore, in the absence of Department error, the Department is not able to refund the collection fees.

In *P/S, Inc. v. Ind. Dep't of State Revenue*, the tax court concluded that the taxpayer was responsible for paying collection fees because it had not rebutted the presumption that it received the notices which the Department mailed. *P/S, Inc. v. Ind. Dep't of State Revenue*, 853 N.E.2d 1051, 1054-55 (Ind. Tax Ct. 2006). The court ruled, "when an administrative agency sends notice through the regular course of mail, a presumption arises that such notice is received." *Id.* at 1054. The court further explained that the taxpayer in that case merely asserted that it had not received notice and that the Department had explained that it had not received the notices as returned mail. *Id.*

In this case, the Department followed the correct procedure regarding its collection process. The Department has determined that it neither erred in following the proper procedure, nor in failing to give proper notice. Upon investigation however, the Department's internal system denied the same part of Taxpayer's request twice. When Taxpayer filed her return, the Department adjusted Taxpayer's account and denied \$135 refund that was pursuant to her filing her 2011 income tax return. When Taxpayer requested a refund, the Department included the same amount in its denial calculation again. However, based on how the internal Departmental system is set up, the second denial was incorrect. Thus, Taxpayer did in fact overpay \$135. However, because Taxpayer failed to timely respond to the Department's notices, and the Department did not err in its collection procedure, the collection fees and agency damages were properly remitted to the Department. Thus, Taxpayer's protest is sustained in part and denied in part.

FINDING

Taxpayer's protest of the refund denial by the Department is sustained in part and denied in part.

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